



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Francis L. Daniel  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT**

### **ISSUED TO**

**BURNS EQUIPMENT CO., INC.**

**Registration No. VAG840002**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Burns Equipment Co., Inc., doing business as Womack Contractors (CI of Suffolk), for the purpose of resolving certain violations of environmental law and/or regulations.

### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-190-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Nonmetallic Mineral Mining.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES General Permit for Nonmetallic Mineral Mining No. VAG84, which became effective on June 30, 1999, expired on June 30, 2004, reissued on July 1, 2004, and expires on June 30, 2009.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. Burns Equipment Co., Inc., doing business as ("dba") Womack Contractors (CI of Suffolk) ("Womack") owns and operates Burris Borrow Pit ("facility"), which is a sand mining operation located at 348 Benton Road, Suffolk, Virginia 23434. Womack is subject to the Permit through Registration No. VAG840002, which was issued October 4, 2004, and expires June 30, 2009. The registration, initially addressed the discharge of storm water associated with industrial activities, and was modified on November 15, 2004, to include authorization to discharge process wastewater. Womack was previously subject to the Permit through Registration No. VAG843030, which was issued June 1, 2000 and expired when the Permit expired on June 30, 2004. The Permit authorizes Womack to discharge process wastewater and commingled storm water associated with industrial activities via outfall 001, and storm water associated with industrial activities.
2. Womack was required to submit a registration statement to DEQ at least 180 days prior to the expiration of the Permit. The registration statement was due no later than December 31, 2003.
3. By letter dated April 1, 2004, DEQ notified Womack that the Permit would expire on June 30, 2004. In addition, the letter stated that the Permit provides VPDES general permit coverage to discharges from all qualified mining facilities that submit a registration statement and are approved for coverage.
4. DEQ received Womack's registration statement on August 10, 2004. DEQ issued Registration No. VAG840002 to Womack on October 4, 2004. Womack did not have permit coverage, while the facility was in operation, for discharge of process wastewater and storm water associated with industrial activities from July 1, 2004, through October 3, 2004.
5. On September 22, 2004, DEQ was notified by the Watershed Superintendent of the City of Portsmouth's Lake Kilby Water Treatment Plant, of a discharge into Lake Kilby, a Portsmouth water supply lake.
6. On September 23, 2004, DEQ inspection staff conducted a site inspection of the facility and observed a discharge from the facility flowing into an existing creek bed, to a creek, which flows directly into Lake Kilby. DEQ inspection staff sampled the observed discharge to determine the pH levels. Samples were taken from the settling basin, the creek where the wastewater exits the settling basin,

and the creek bed prior to entering Lake Kilby. The results indicated pH levels at 3.93 Standard Units ("SU"), 4.01 SU, and 3.85 SU respectively. The Virginia water quality standard for pH is in the range of 6 SU to 9 SU.

7. On September 24, 2004, DEQ inspection staff requested information from the Department of Mines, Minerals, and Energy ("DMME") to determine the activity at the facility. DMME staff informed DEQ that Womack was working on mine reclamation and preparing to close the site. DMME staff provided DEQ with the pumping records submitted to DMME by Womack. The pumping records indicated that Womack commenced pumping process wastewater from the facility's pit to a settling basin, which discharges to a creek bed, thence to Lake Kilby, on September 15, 2004 through September 23, 2004, with an estimated daily average flow of 0.48 MGD and September 27, 2004 through September 28, 2004, with an estimated daily average flow of 0.41 MGD. DEQ records do not indicate that Womack reported the discharge to DEQ.
8. Part III.M of the Permit requires Womack to submit a new registration statement at least 180 days before the expiration date of the existing Permit. Womack violated the Permit by failing to submit the registration statement 180 days prior to the expiration date of the existing Permit.
9. Va. Code § 62.1-44.5.A prohibits waste discharges to State waters except in compliance with a certificate issued by the Board. 9 VAC 25-190-50.A of the Regulation specifies that any owner governed by the Permit is authorized to discharge to surface waters of the State provided that the owner files a registration statement, as described in the Regulation, which is accepted by the Board. Womack violated the Va. Code and the Regulation by discharging to surface waters of the State, September 15, 2004, through September 23, 2004, and September 27, 2004, through September 28, 2004, without Permit coverage.
10. Va. Code § 62.1-44.5.B requires Womack to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24 hours of said discovery. Womack violated the Va. Code by failing to report the unpermitted discharge to DEQ, which occurred September 15, 2004, through September 23, 2004, and September 27, 2004, through September 28, 2004.
11. On August 12, 2004, DEQ issued Warning Letter No. 04-08-TRO-005, advising Womack that it was operating without Permit coverage. On October 13, 2004, DEQ issued Notice of Violation ("NOV") No. 04-10-TRO-001, advising Womack of an unpermitted discharge with a pH of 4.0 SU, its failure to report the unpermitted discharge, operating without Permit coverage, and applicable regulatory and permit citations.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Womack, and Womack agrees to comply with the Permit. In addition, the Board orders Womack, and Womack voluntarily agrees to pay a civil charge of \$9,100 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Womack's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Womack, for good cause shown by Womack, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced warning letter and Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Womack admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Womack declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Womack to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of

appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Womack shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Womack shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Womack shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Womack intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Womack. Notwithstanding the foregoing, Womack agrees to be bound by any compliance date, which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Womack. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Womack from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

Burns Equipment Co., Inc.  
dba Womack Contractors (CI of Suffolk)  
Consent Order  
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11. By its signature below, Womack voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of September, 2005.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

Burns Equipment Co., Inc. dba Womack Contractors (CI of Suffolk) voluntarily agrees to the issuance of this Order.

By: Percy C. Burns, III PRESIDENT  
Date: 6/21/05

Commonwealth of Virginia  
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 21<sup>st</sup> day of June, 2005, by Percy C. Burns, III, who is  
(name)  
President  
(title)  
of Burns Equipment Co., Inc. dba Womack Contractors  
(CI of Suffolk), on behalf of Womack.

Deidre M. Bower  
Notary Public

My commission expires: 5-31-07